

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DINO VICTOR CLAY,

Plaintiff,

v.

18-CV-00933-LJV-HBS
DECISION & ORDER

SCOTT RIORDAN, *et al.*,

Defendants.

On August 21, 2018, the *pro se plaintiff*, Dino Victor Clay, commenced this action under 42 U.S.C. § 1983. Docket Item 1. On January 24, 2020, the municipal defendants moved to dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of jurisdiction and under Rule 12(b)(6) for failure to state a claim upon which relief may be granted, Docket Item 12; on February 14, 2020, the plaintiff responded, Docket Item 16; and on March 25, 2020, the municipal defendants replied, Docket Item 19. On June 4, 2020, defendant John's Towing also moved to dismiss under Rules 12(b)(1) and 12(b)(6), Docket Item 20; on June 24, 2020, the plaintiff responded, Docket Items 23-24; and on July 7, 2020, defendant John's Towing replied, Docket Item 25.

On February 18, 2020, this Court referred this case to United States Magistrate Judge Hugh B. Scott for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 15. On July 10, 2020, Judge Scott issued a Report and Recommendation ("R&R") finding that the defendants' motions should be granted. Docket Item 26. The

parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The court must review *de novo* those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Scott's R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge Scott's recommendation to grant the defendants' motions.

For the reasons stated above and in the R&R, the defendants' motions to dismiss, Docket Items 12 and 20, are GRANTED; the complaint, Docket Item 1, is dismissed; and the Clerk of the Court shall close the file.

SO ORDERED.

Dated: August 4, 2020
Buffalo, New York

/s/ Hon. Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE